

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING MAP AMENDMENT REPORT (#FZC-21-25)**  
**CHON & JUNG**  
**JANUARY 14, 2022**

**I. GENERAL INFORMATION**

**A. Project Description**

This is a report to the Flathead County Planning Board and Board of Commissioners regarding a request by Sands Surveying, Inc. on behalf of Myongsuk Chon and Seung Jun Jung, for property located within the Westside Zoning District. The proposed amendment, if approved, would change the zoning of the subject property from *SAG-10 (Suburban Agricultural)* to *R-2.5 (Rural Residential)*.

**B. Application Personnel**

**1. Owner/Applicant**

Myongsuk Chon  
108 Eagle Crest Court  
Kalispell, MT 59901

**2. Technical Representative**

Sands Surveying, Inc.  
2 Village Loop  
Kalispell, MT 59901

**C. Process Overview**

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the South Campus Building at 40 11<sup>th</sup> Street West in Kalispell.

**1. Land Use Advisory Committee/Council**

This property is not located within the jurisdiction of a Land Use Advisory Committee.

**2. Planning Board**

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on February 9, 2022 at 6:00 P.M. in the Second Floor Conference Room of the South Campus Building at 40 11<sup>th</sup> Street West in Kalispell, MT. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration.

**3. Commission**

In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment on March 15, 2022. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Office of the Board of Commissioners at 800 South Main Street in Kalispell.

**PROPERTY CHARACTERISTICS**

**D. Subject Property Location and Legal Description**

The property is located at 1318 Armstrong Lane near Kalispell, MT (see Figure 1 below) and is approximately 12.88 acres. The property can be legally described as follows:

A tract of land, situated, lying, and being in the East Half of the Southwest Quarter of the Southeast Quarter (E½SW¼SE¼) of Section 10, Township 28 North, Range 22 West, P.M.M., Flathead County, Montana.

Excepting therefrom a tract of land in the SE corner of the SW¼SE¼ of Section 10, particularly described as follows:

Commencing at the SE corner of said SW $\frac{1}{4}$ SE $\frac{1}{4}$ ; thence Westerly along the section line a distance of 349 feet; thence North 00°00' East, a distance 390 feet; thence North 30°44' East, a distance of 99 feet; thence North 15°08' East, a distance of 100.3 feet; thence North 01°45' East, a distance of 100 feet; thence North 10°19' West, a distance of 92.5 feet; thence South 87°35' East, a distance of 294.3 feet; thence Southerly along the subdivision line a distance of 740 feet to the place of beginning.

Also excepting therefrom, a tract of land in the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 10, and more particularly described as follows:

Commencing at a point on the South boundary line of said Section 10 which is a distance of 349 feet West from the SE corner of said SW $\frac{1}{4}$ SE $\frac{1}{4}$ ; thence due North a distance of 390 feet; thence South 65°00' West, a distance of 227.6 feet; thence South 06°15' West, a distance of 297 feet; thence Easterly along the section line, a distance of 243.5 feet to the place of beginning.

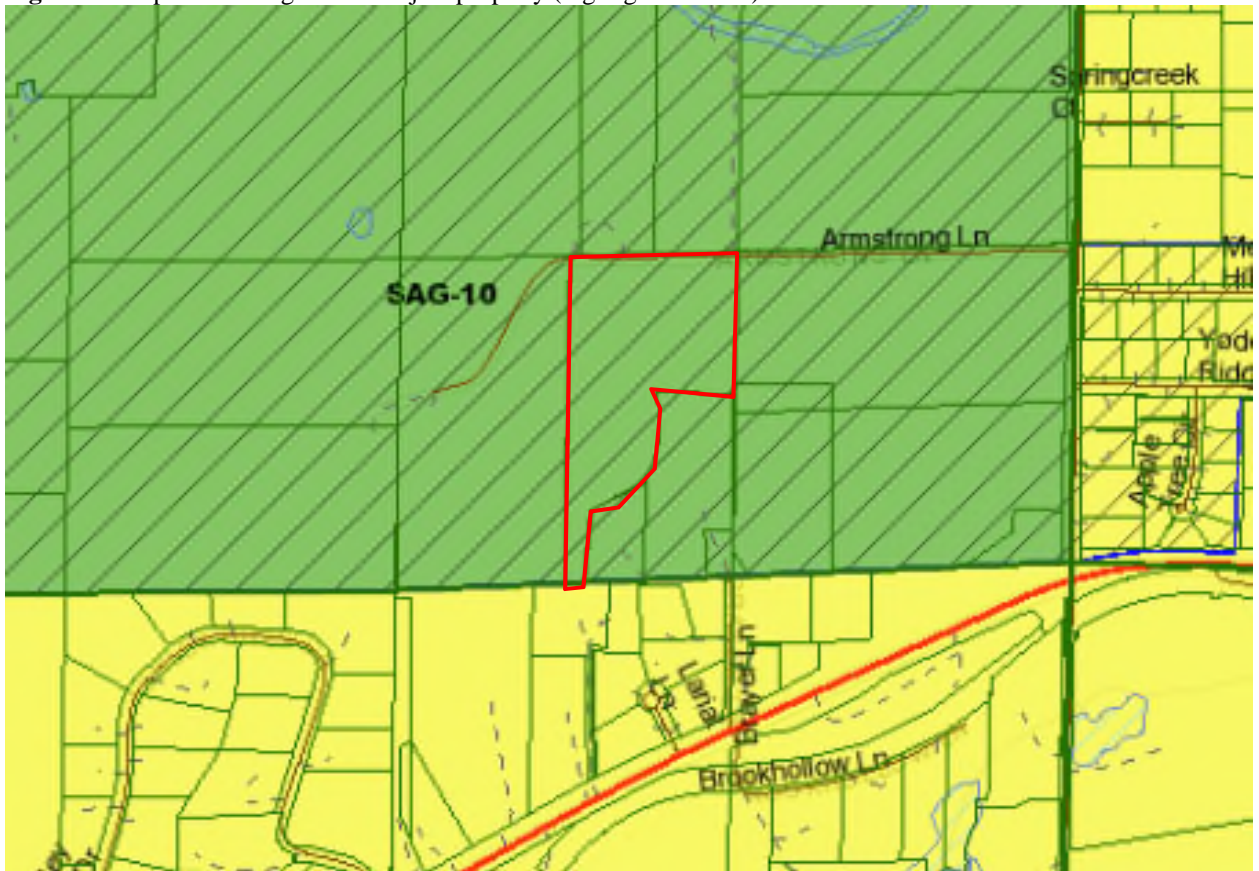
**Figure 1:** Subject property (outlined in yellow)



#### **E. General Character of and Reason for Amendment**

The property is located north of U.S Highway 2 and West of West Springcreek Road. The property is undeveloped and is flat, open space. The application states the reason for the request as, the owners would like to have the ability to do a family transfer for their children in the future.

**Figure 2:** Proposed zoning on the subject property (highlighted in red)

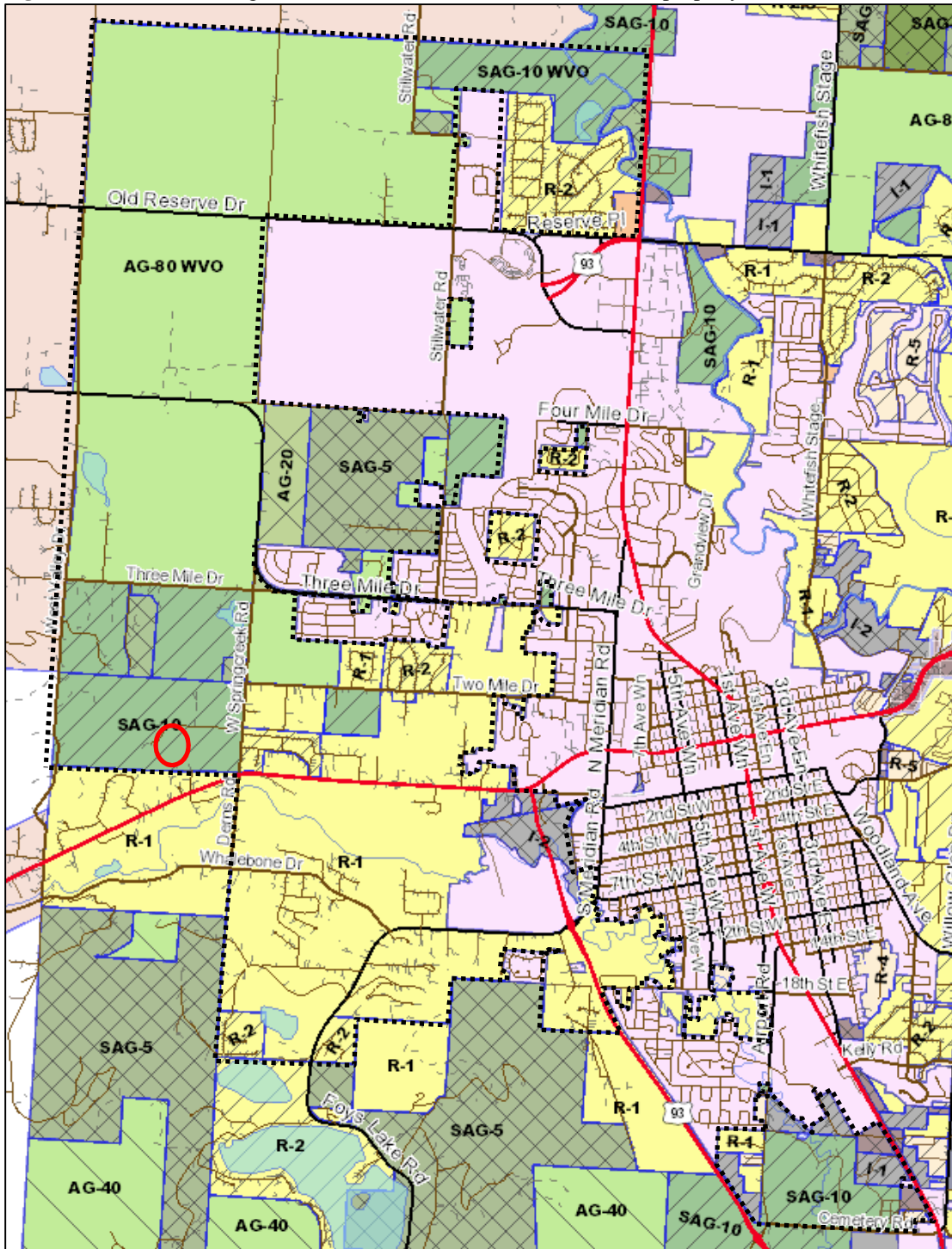


**F. Adjacent Zoning and Character of the Overall Zoning District**

The property is located in the Westside Zoning District. The character of the zoning district in the vicinity of the subject property is suburban agricultural, agricultural, suburban residential and one-family limited residential. Property to the south consist of mostly R-1. The property is also within close proximity to the Lower Side Zoning District which is south of the subject property.



**Figure 3:** Westside Zoning District (outlined with dashed black line & property outlined in red)



## **G. Public Services and Facilities**

Sewer: N/A  
Water: N/A  
Electricity: Flathead Electric Cooperative  
Natural Gas: Northwestern Energy  
Telephone: CenturyTel  
Schools: Kalispell Public School District  
Glacier High School District  
Fire: Smith Valley Fire District  
Police: Flathead County Sheriff

## **II. COMMENTS**

### **A. Agency Comments**

1. Agency referrals were sent to the following agencies on November 30, 2021:
  - Montana Fish, Wildlife and Parks
  - Flathead County Road Department
  - Flathead County Solid Waste
  - Flathead City-County Environmental Health Department
  - Flathead County Weeds & Parks Department
  - Bonneville Power Administration
  - City of Kalispell Planning Department
  - Smith Valley Fire District
  - Flathead County Sheriff
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:
  - Flathead County Road & Bridge Department
    - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated December 3, 2021
  - Flathead County Solid Waste District
    - Comment: “The District requests that all solid waste generated at the proposed location be hauled by a private licensed hauler. Evergreen Disposal is the licensed (PSC) Public Service Commission licensed hauler in this area.” Letter dated December 3, 2021
  - Bonneville Power Administration
    - Comment: “At this time, BPA does not object to this request, as the nearest property is located approximately .42 miles away from the BPA transmission lines or structures.” Email received December 1, 2021
  - Flathead County Environmental Health Department
    - Comment: “Environmental Health offers no comment regarding this proposed zone change.” Letter dated December 13, 2021

- Montana Fish, Wildlife and Parks
  - Comment: “This property is located within an area that has been traditionally used for agriculture and is near forested habitat with low density development that provides for valuable wildlife habitat and movement corridors. Cumulatively, higher-density development in the Flathead Valley has the result of degrading wildlife habitat and wildlife movement corridors. Subdivision of this property will impact habitat for white-tailed deer, small mammals, and nesting migratory birds

Flathead County zoning was established to maintain the quality of land and values of the community. Wild life contributes to the local economy and continues to be highly valued by residents of Flathead Valley, and the natural setting of the valley is often why people move here. Granting the zone change request would result in higher density housing than current allowed, adding to the cumulative loss of wildlife habitat.” Letter dated December 16, 2021

## **B. Public Comments**

1. Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on January 19, 2022. Legal notice of the Planning Board public hearing on this application was published in the January 23, 2022 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed zoning map amendment, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

2. Public Comments Received

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for February 9, 2022 and/or the Commissioner’s Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

## **III. EVALUATION OF PROPOSED AMENDMENT**

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

## A. Build-Out Analysis

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

Per Section 3.09 of the Flathead County Zoning Regulations (FCZR), R-2.5 is defined ‘*A district intended for rural, primarily residential areas where larger, estate-type lot sizes are appropriate and agricultural/silvicultural/horticultural operations are a decreasingly viable land use. The use of this district is appropriate in transition areas adjacent to and between higher-density Residential (R) and lower-density Suburban Agriculture (SAG) zones. This district is not appropriate in areas primarily surrounded by lower-density SAG and AG zones and/or areas adjacent to significant ongoing agricultural/silvicultural/horticultural and/or extractive industry operations. Furthermore, public facilities should be appropriately developed to accommodate the density and land uses of this designation. This includes paved roads. It is intended that no uses be permitted in this district that will tend to devalue property for residential purposes or interfere with the health, safety, order or general welfare of persons residing therein..*’

The SAG-10 designation is defined in Section 3.07 FCZR as, ‘*A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*’

The permitted uses and conditional uses for the proposed and existing zoning contain several differences. The amendment would decrease the number of permitted uses from 16 to 15 while decreasing the conditional uses from 28 to 23.

The permitted uses listed in both the SAG-10 and R-2.5 are as follows:

- Agricultural/horticultural/silvicultural use.
- Class A manufactured home.
- Day care home.
- Dwelling, single-family.
- Dwelling unit, accessory (ADU).
- Guest house.
- Home occupation
- Homeowners park and/or beach.
- Livestock.
- Nursery, landscaping material.
- Park and/or publicly owned recreational facility.

- Produce stand.
- Public transportation shelter station.
- Public utility service installation.
- Stable, private.

The conditional uses listed in both the SAG-10 and R-2.5 are as follows:

- Airfield.
- Aircraft hangers when in association with properties within or adjoining an airport/landing field.
- Bed and breakfast establishment.
- Camp/Retreat Center.
- Caretaker's facility.
- Cellular communications tower.
- Cemetery, mausoleum, columbarium, crematorium.
- Church and other place of worship.
- Community center building operated by a non-profit agency.
- Community residential facility.
- Dwelling, family hardship.
- Electrical distribution station.
- Gold course.
- Golf driving range.
- Manufactured home park.
- School, primary and secondary.
- Short-term rental housing.
- Stable, public.
- Temporary building, structure or use.
- Water and sewage treatment plant.
- Water storage facility.

The bulk and dimensional requirements within the current zoning requires a 20 foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. For SAG-10 the permitted lot coverage is 20% and maximum height is 35 feet.

The proposed zoning requires a setback of 20 foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. The maximum building height is 35 feet for the principal structure and 18 feet for the accessory structure, providing it does not meet the setbacks for the principal structure and the permitted lot coverage is 25%.



The existing zoning requires a minimum lot area of 10 acres. The subject property totals 12.88 acres therefore no lots could be created with the current zoning. The proposed zoning minimum lot area is 2.5 acres. Therefore, it is likely that at full build-out the proposed zoning would allow approximately 4 additional lots for residential use. However each lot could have multiple uses with the issuance of a conditional use permit.

The requested zone change has the potential to increase density through subsequent subdivision in the future. The bulk and dimensional requirements are the same for existing and proposed zoning and the number of permitted and conditional uses would decrease with the proposed zoning.

**B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)**

**1. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.**

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as ‘Suburban Agricultural.’ The proposed R-2.5 zoning classification would appear to contrast with the current designations. However, Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, “This map depicts areas of Flathead County that are legally designated for particular land uses. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plans. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map.” Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on goals and policies of the Growth Policy.

The following is a consideration of goals and policies which appear to be applicable to the proposed zone change:

- ❖ *G.2 – Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
  - The amendment would allow the owner to Family Transfer but would also allow for the continuation of the existing uses on the property.
- ❖ *G.4 – Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land uses.*

- *P.4.2 – Identify lands most suited to agriculture (appropriate soils, access to water, shape and size of parcel, etc.).*
- *P.4.3 – Identify a desirable gross density for rural residential development that retains land value, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc).*
- The zoning map amendment allows greater flexibility to the land owner while still allowing agriculture in the area. The proposed zone change will be in line with the adjacent residential densities, which are intended to be a transitional zone between urban and more rural, agricultural uses and densities. The application points out, “The proposed R-2.5 is a transition zone between the suburban residential SAG-10, the R-1 which is located directly to the south and the R-2 located a quarter of a mile to the east. Like the SAG-10 zone, the R-2.5 allows for agricultural uses but it also allows for a smaller lot size. The proposed R-2.5 (Rural Residential) is a transition zone between agricultural and suburban residential.”
- ❖ *G.8 – Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*
  - The R-2.5 designation would allow for densities of 1 dwelling unit per 2.5 acres which would likely not require public services because 2.5 acres lots can be serviced by septic systems and wells.
- ❖ *G.15 – Promote a diverse demographic of residents.*
  - *P.15.1 – Encourage housing, employment, education and recreation to attract, support and maintain young families.*
    - The proposed zone would allow for single family dwellings, manufactured homes and accessory dwelling units as permitted uses, all of which has the potential to make housing more affordable for young families.
- ❖ *G.23 – Maintain safe and efficient traffic flow and mobility on county roadways.*
- *P.23.2 – Limit private driveways from directly accessing arterials and collector roads to safe separation distances.*
- *P.23.4 – Recognize areas in proximity to employment and retail centers as more suitable for higher residential densities and mixed use development.*
  - This report contains discussion on the proposals potential burden on transportation below.
- ❖ *G.31 – Growth that does not place unreasonable burden on the school district to provide quality education.*
  - Further discussion is contained below in this report on the adequate provision of schools below.
- ❖ *G.32 – Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*

❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*

**Finding #1:** The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request, the Suburban Agriculture land use designations identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.

**2. Whether the proposed map amendment is designed to:**

**a. Secure safety from fire and other dangers;**

The subject property is located within the Smith Valley Fire District. The nearest fire and emergency response center is located approximately 2.5 miles south on Foys Lake Road and Lakeshore Drive. The Smith Valley Fire Department, who did not provide comments on this proposal, would respond in the event of a fire or medical emergency. Access to the subject property would be directly from Armstrong Lane, a paved two-lane road within a 60 foot easement. While the subject property is located within the Wildland Urban Interface (WUI) it is not forested or located within a county wide priority area.

According to FEMA FIRM Panel 30029C1810J, the property is located within the AE flood zone, an area determined to be outside the 1% annual chance flood hazard.

**Finding #2:** The proposed map amendment will not impact safety from fire and other danger because although the property is located within the WUI it is not forested or located in a county wide priority area, is approximately 2.5 road miles from the nearest fire station within the Smith Valley Fire District, is located off a U.S. Highway and not located within the 100 year floodplain.

**b. Promote public health, public safety, and general welfare;**

As previously stated, the subject property is located within the Smith Valley Fire District. The Smith Valley Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff's Department provides police services to the subject property. Armstrong Lane and Highway 2 W appear adequate to provide ingress and egress for emergency vehicles which would help to ensure adequate public health and safety. Permitted and conditional uses in the R-2.5 zone would serve to protect and promote public health, safety and general welfare.

**Finding #3:** The proposed zoning map amendment appears to have minimal negative impacts on public health, safety and general welfare because the property is served by the Smith Valley Fire Department, Flathead County Sheriff and future development would comply with the permitted and conditional uses in the R-2.5 zone.

**c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

The property is located to the west of W Springcreek Drive and south of Armstrong Lane with primary access to the property off Armstrong Lane. Armstrong Lane is a two-lane, paved private road within a 60 foot easement. There are no traffic counts

for Armstrong Lane as the road is private. W Spring Creek Drive which is a paved, two-lane County road within a 40 foot right-of-way. The average daily traffic along W Springcreek Drive in 2019 was 927. The Flathead County Road and Bridge Department had no objections to this proposal.

The applicant will be required to work with Flathead City-County Health Department to meet the needs of any future development. No objection was provided from Environmental Health on the proposal. The future review would include potable water supply, wastewater treatment and disposal, stormwater drainage, and solid waste.

While the subject property is located within the Flathead High School District and Kalispell Elementary School District, neither school district provided comments on the proposal. The proposed zoning has the potential to generate school children but is not likely to impact either school. According to the 2020 Census estimates, there are 49,531 housing units in the Flathead County. The Flathead County Statistical Report of Schools 2020 states there are 16,758 students enrolled in public, private and home schools. The total students (16,758) divided by the total households (49,531) equals approximately 0.34 students per household. Therefore, 4 additional lots could generate approximately one school age child. It is anticipated that the school would have capacity should any residential growth occur as a result of the proposed zoning map amendment.

The zoning map amendment would change the current 10 acre minimum lot size to a smaller 2.5 acre minimum lot size, it is anticipated subsequent future development would require review. There are numerous parks, natural areas, and recreational opportunities within a short drive of the subject property.

**Finding #4:** The proposed amendment would facilitate the adequate provision of water, sewerage, schools, parks, and other public requirements because the further division of land or a change of use would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality and it is anticipated that future development would require subdivision review.

**3. In evaluating the proposed map amendment, consideration shall be given to:**

**a. The reasonable provision of adequate light and air;**

While the proposed zoning map amendment has the potential to increase development density on the subject property, any additional lots created would be required to meet the bulk and dimensional requirements of the R-2.5 zoning classification.

The bulk and dimensional requirements for the proposed R-2.5 zone are nearly the same to the bulk and dimensional requirements for the existing SAG-10. The proposed R-2.5 zoning sets permitted lot coverage at 25% and there is a 2.5 acre minimum lot size. The proposed zoning map amendment has the potential to increase development density on the subject property. The minimum setback requirements in the R-2.5 are 20 feet for the front, rear, side and side-corner. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from

county roads classified as collector or major/minor arterials. Building height requirement is 35 feet for the principal structure and 18 feet for accessory structure. These bulk and dimensional requirements within the R-2.5 zoning designation have been established to ensure a reasonable provision of light and air.

**Finding #5:** The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional requirements of the R-2.5 designation.

**b. The effect on motorized and non-motorized transportation systems;**

The property is located between Highway 2 W and Armstrong Lane with primary access to the property off Armstrong Lane. Armstrong Lane is a two-lane private, paved road within a 60 foot easement. There are no traffic counts for Armstrong Lane as it is a private road. The property can also be accessed by W Springcreek Drive which is a paved, two-lane County road within a 40 foot right-of-way. The average daily traffic along W Springcreek Drive in 2019 was 927.

Staff utilized the Institute of Transportation Engineers Trip Generation Manual to determine the average daily trip (ADT) generation for residential uses. According to the Trip Manual the average trip generation rate for a single-family dwelling is 10 trips per day. The proposal could generate 40 ADT for the single-family dwellings if 4 lots are developed. However, given the wide range of uses the property could be utilized for, it is difficult to determine the exact ADT generated by the proposal.

Because the property is located near a state maintained highway and a two lane county collector and MDT and the Flathead County Road and Bridge Department have no objections on the proposal, effects on motorized transportation should be minimal.

The Flathead County Trails Plan does not identify Armstrong Lane as an arterial bike/pedestrian trail. It is anticipated that there will be minimal impact on non-motorized traffic because future development (either through subdivision or site plan review) of the property will not require an easement for a bicycle trail.

**Finding #6:** Effects on motorized and non-motorized transportation systems will be minimal because primary access is via Armstrong Lane, a two-lane, paved, private road and would not need to provide a future bike/pedestrian easement.

**c. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**

The subject property is not located within the annexation boundary. The subject property is not located within the Growth Policy Future Land Use Map area. An agency referral was sent to the Kalispell Planning Department on November 30, 2021 but staff has not received any comments from the City as of the date on this report.

The Kalispell Growth Policy Planning Area Map designates area to the north and east of the subject property as *Suburban Residential*. The ‘*Suburban Residential*’ is defined in the Kalispell Growth Policy as, “*Low-density residential (suburban) neighborhoods should be developed at a density that does not exceed 4 dwelling*



*units per acre on an overall site basis.*” The proposed R-2.5 zoning designation would provide for densities much less than the maximum 4 dwelling units per acre as allowed by the Kalispell Growth Policy. It appears that the proposed zoning designation would be compatible with urban growth in the vicinity of Kalispell.

**Finding #7:** It appears that the proposed zoning designation would be compatible with urban growth in the vicinity of Kalispell because the property is located outside the annexation policy boundary and is outside of the City of Kalispell Growth Policy Future Land Use Area and the zoning designation of suburban residential appears to be compatible with the proposed zoning.

**d. The character of the district(s) and its peculiar suitability for particular uses;**

The character of the district and its peculiar suitability for particular uses can best be addressed using the “three part test” established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

i. ***The zoning allows a use that differs significantly from the prevailing use in the area.***

The uses directly adjacent to the subject property on all sides are currently agricultural and residential under the SAG-10 and R-1 and zoning designations within a quarter-mile proximity are R-1, R-2, SAG-10 and B-2. The proposed R-2.5 zoning designation is designed to provide a transition between higher density residential use and lower density agricultural use, per Section 3.09.010 FCZR. The uses allowed in the R-2.5 zoning designation do not differ significantly from existing uses in the area.

ii. ***The zoning applies to a small area or benefits a small number of separate landowners.***

The zoning map amendment would apply to one tract of land which is owned by one landowner. Using standard ArcGIS software staff was able to determine the property is located within SAG-10 zoned area that encompasses 12.88 acres. The zoning within half a mile of the subject property is a handful of zoning designations and lot sizes. Although the subject property is a larger tract in comparison to many of the other properties, many adjacent properties are less than 10 acres.

iii. ***The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.***

The zoning map amendment would apply to one tract for the benefit of the owner, however, the uses allowed and densities within the proposed zoning designation are very similar to the existing uses and densities on adjacent property. Many of the land uses listed as permitted uses in the proposed R-2.5 zoning designation exist in the area of the subject property, or would not be out

of character with the existing uses in the general vicinity. The zone change would benefit one property owner but not at the expense of surrounding land owners adjacent to R-2.5.

**Finding #8:** The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because approval would not be at the expense of other landowners, there is a mixture of uses and zoning in the area along Highway 2 W and other zoning districts in the vicinity are similarly sized.

**e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

The subject property is located within the Westside Zoning District and surrounded by suburban agricultural, residential and agricultural zoning (see Figure 2). Previous sections of this report have discussed the differences between permitted and conditional uses in the existing SAG-10 zoning and the proposed R-2.5 zoning designation. Conserving the value of buildings throughout the jurisdictional area is a function of allowing land uses that are appropriate and reasonable. Many of the land uses listed as permitted uses in the proposed R-2.5 zone exist in the vicinity of the subject property such as single-family residential and agricultural uses. The permitted and conditional uses would likely not impact the value of buildings and would be appropriate land uses throughout the area of the proposed zone change because they already exist in the area. The uses allowed in the proposed zoning are similar to the existing uses.

**Finding #9:** This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this location because the area already contains a variety of similar uses.

**4. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

As previously stated, the subject property is not located within the boundaries of the City of Kalispell Growth Policy Future Land Use Area, updated by the City of Kalispell in 2017. The proposed R-2.5 zoning designation is designed to provide a transition between higher density residential and lower density agricultural zoning designations to minimize the conflict of uses.

The nearest City of Kalispell zoning is R-3/PUD to the northeast of the subject property. The Kalispell R-3/PUD zone is a Planned Unit Development in a residential zone that allows for single family dwellings on at least 6,000 square foot lots which is a greater density than the proposed R-2.5 with a density of one unit per 2.5 acres. The amendment appears to be, as nearly as possible, compatible with the zoning ordinance of the City of Kalispell.

**Finding #10:** The proposal appears to be compatible to the City of Kalispell's zoning because the while subject property is located outside the City of Kalispell Growth Policy Future Land Use Area, it is also located outside the City of Kalispell annexation boundary and the proposed R-2.5 zoning designation is designed to act as a transition between residential and agricultural zoning designations that exist within this area.

#### **IV. SUMMARY OF FINDINGS**

1. The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request, the Suburban Agriculture land use designations identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.
2. The proposed map amendment will not impact safety from fire and other danger because although the property is located within the WUI it is not forested or located in a county wide priority area, is approximately 4.5 road miles from the nearest fire station within the Smith Valley Fire District, is located off a U.S. Highway and not located within the 100 year floodplain.
3. The proposed zoning map amendment appears to have minimal negative impacts on public health, safety and general welfare because the property is served by the Smith Valley Fire Department, Flathead County Sheriff and future development would comply with the permitted and conditional uses in the R-2.5 zone.
4. The proposed amendment would facilitate the adequate provision of water, sewerage, schools, parks, and other public requirements because the further division of land or a change of use would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality and it is anticipated that future development would require subdivision review.
5. The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional requirements of the R-2.5 designation.
6. Effects on motorized and non-motorized transportation systems will be minimal because primary access is via Armstrong Lane, a two-lane, paved, private road and would not need to provide a future bike/pedestrian easement.
7. It appears that the proposed zoning designation would be compatible with urban growth in the vicinity of Kalispell because the property is located outside the annexation policy boundary and is outside of the City of Kalispell Growth Policy Future Land Use Area and the zoning designation of suburban residential appears to be compatible with the proposed zoning.
8. The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because approval would not be at the expense of other landowners, there is a mixture of uses and zoning in the area along Highway 2 W and other zoning districts in the vicinity are similarly sized.
9. This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this location because the area already contains a variety of similar uses.
10. The proposal appears to be compatible to the City of Kalispell's zoning because the while subject property is located inside the City of Kalispell Growth Policy Future Land Use Area, it is outside the City of Kalispell annexation boundary and the proposed R-2.5 zoning designation is designed to act as a transition between residential and agricultural zoning designations that exist within this area.

**V. CONCLUSION**

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal generally complies with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: LM